No. 120.

Brf. of Atty. Gen'l (Hoyt) for Appellees.

Filed Apr. 16, 1898.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

FREDERICK W. FINK AND ALBERT PLAUT, trading as Lehn & Fink, appellants,
v.
THE UNITED STATES.
} No. 120.

BRIEF FOR THE UNITED STATES.

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STATEMENT OF THE CASE.

This case comes from the circuit court of appeals for the second circuit, with a request for instructions from this court upon the following questions:

1. Is muriate of cocaine properly dutiable under paragraph 74 of the tariff act of October 1, 1890?

2. Is muriate of cocaine properly dutiable under paragraph 76 of the tariff act of October 1, 1890?

The collector, and afterwards the circuit court, held affirmatively as to the latter question, thus deciding that muriate of cocaine is to be regarded as included in—

> Products or preparations known as alkalies, alkaloids, distilled oils, essential oils, expressed oils,

> rendered oils, and all combinations of the foregoing, and all chemical compounds and salts not specially provided for in this act. (Par. 76, act of October 1, 1890, 26 Stat., 570.)

and not under—

> All medical preparations, including medicinal proprietary preparations, of which alcohol is a component part, or in the preparation of which alcohol is used, not specially provided for in this act. (Par. 74, *ibid.*)

The circuit court of appeals reports that muriate of cocaine is an alkaloidal salt and is a chemical salt produced by combination of the alkaloid cocaine and muriatic acid; that alcohol is necessarily used as a solvent in preparing it; that muriate of cocaine is a medicinal preparation and known as such by the physician, the chemist, the druggist, and in commerce; that the term "salts" or "chemical salts" is a generic name known by chemists, pharmacists, and druggists as covering, among others, muriate of cocaine; that "medicinal preparation" has no peculiar commercial meaning, but signifies generally a substance used solely in medicine and prepared for the use of the apothecary or physician to be administered as a remedy in disease; that the number of chemical salts is very large and a very small proportion is used in medicine; and that there is no adequate testimony in the case in regard to the relative number of imported medicinal preparations in the preparation of which alcohol is used, and of imported chemical salts.

It may be stated here that an examination of the dictionary authorities as to the terms "preparations" and "salts" throws no additional light upon and adds no

force to the distinctions of the certificate as to the meaning and use of the terms "medicinal preparations" and "chemical salts."

The Government contends that the decision of the circuit court was correct.

BRIEF OF ARGUMENT.

I.

The meaning of the language involved, as drawn from former tariff acts, shows that muriate of cocaine properly falls under paragraph 76.

It is clear from a reference to the tariff act superseded by that of 1890 that "medicinal preparations, including medicinal proprietary preparations" was an expression less broad than medicines. In that law these preparations were all subdivided under other terms—those

> known as cerates, conserves, decoctions, emulsions, extracts, solid or fluid; infusions, juices, liniments, lozenges, mixtures, mucilages, ointments, oleo-resins, pills, plasters, powders, resins, suppositories, sirups, vinegars, and waters * * * [proprietary] cosmetics, pills, powders, troches or lozenges, sirups, cordials, bitters, anodynes, tonics, plasters, liniments, salves, ointments, pastes, drops, waters, essences, spirits, oils, or preparations or compositions recommended to the public as proprietary articles, or prepared according to some private formula as remedies or specifics * * * medicinal preparations known as essences, ethers, extracts, mixtures, spirits, tinctures, and medicated wines of which alcohol is a component part. (Pars., 93, 99, 118, of the tariff act of 1883, 22 Stat., 494, 495.)

Without undertaking to point out the precise limitations in the mind of Congress to the phrase "medicinal preparations," it is very clear that the words "known as" before cerates, emulsions, extracts, etc., and the mention of "proprietary preparations, to wit, cosmetics, pills, powders," etc., indicate that "medicinal preparations" was not equivalent to medicines; that in the intent of Congress every medicine, or substance prepared for use as a medicine, was not one of the "medicinal preparations" intended by this language.

There is doubtless no medicine that does not require to be prepared for use as such in some sense of the word "prepared," and if every medicine was intended, it was superfluous to use the word "preparations."

If, then, "medicinal preparations" was not intended to embrace all medicines, or, what is the same thing, all substances prepared for use as medicines, and if, moreover, "chemical salts" were excluded from "medicinal preparations" by an enumeration of all such preparations, and by being provided for under another paragraph (par. 92, act of 1883, 22 Stat., 494) containing substantially the language of paragraph 76, then it follows that "chemical salts," whether medicines or not, were all intended to be embraced in this language and dutiable as such salts.

But the language of the act of 1883 was transferred almost without change to paragraph 76, and the phrase "medicinal preparations," with an omission of the enumeration of articles for the sake of brevity, but without any indication of a new meaning for the phrase, was transferred to paragraph 74. We thus have an indication

from the act of 1883 that Congress used the phrase "chemical salts" in paragraph 76 to mean all chemical salts, whether used as medicines or not, and did not use the phrase "medicinal preparations" in a sense that would include what was merely a chemical salt, though used as a medicine.

Reiche v. *Smythe* (13 Wall., 162–164):

> And it is fair to presume, in case a special meaning were attached to certain words in a prior tariff act, that Congress intended they should have the same signification when used in a subsequent act in relation to the same subject matter. * * * Congress having, therefore, defined the word in one act so as to limit its application, how can it be contended that the definition shall be enlarged in the next act on the same subject when there is no language used indicating an intention to produce such a result? Both acts are *in pari materia*, and it will be presumed that if the same word be used in both, and a special meaning were given it in the first act, that it was intended it should receive the same interpretation in the latter act in the absence of anything to show a contrary intention.

"Medicinal preparations," in the act of 1890, means, therefore, preparations *ejusdem generis* with the medicinal preparations specified in the act of 1883.

The term "medicinal preparations" has been differentiated from drugs and medicines, not only in the act of 1883, but since it first appeared in tariff laws. (Act of July 30, 1846, Schedules C, D, and E, 9 Stat., 42; act of July 14, 1862, sec. 5, 12 Stat., 543; Rev. Stat., sec. 2504, pp. 475, 478, 480.) These provisions define and classify medicinal preparations in the sense contended for

in this argument. The provisions of the Revised Statutes as to the examination of drugs bear out our contentions. (Secs. 2933–2935.) The term has signified, generally, a composition like a fluid extract or tincture or an ointment prepared for use by mixing or compounding—that is, by other than mere chemical process—and yet differing from the materials—that is, the medicines or drugs—out of which it was made. It included plasters and powders and proprietary articles of various sorts prepared and used for medicinal purposes as remedies or specifics for any disease. It will therefore be seen that the range of the term is wide and embraces very diverse things, in all of which, however, there is the element of preparation by mixing, compounding, or constructing rather than of production by chemical process.

If the distinction by Congress between the species "medicinal preparations" of the genus "drugs" lies in the fact that the "preparation" is something ready prepared for use by customers without any manipulation by the druggist, then muriate of cocaine does not fall under the head of such a "preparation," as its most frequent transfer to the customer is after it is "reduced to a powder by means of a mortar and pestle, or diluted in water or admixed with inert or neutral matter." (Ctf., p. 2). It is therefore, if that be the distinction, a medicine merely and not a "medicinal preparation."

It seems unnecessary, in view of all this, to confound what Congress put asunder by ignoring the Congressional use long attached to the words of paragraphs 74 and 76 and inquiring whether one section as well as the other did not cover muriate of cocaine, and, if so, which applied

to it the more specific language. But that seems to have been the course pursued in the lower courts.

II.

Muriate of cocaine is accurately and definitely designated by the term "chemical salts;" it is merely described by the term "medicinal preparations."

If an article is a "medicinal preparation" and a "chemical salt," and the case must turn on whether the class of "medicinal preparations" is something more definite than the class of "chemical salts," it may, perhaps, be difficult to arrive at the intent of Congress to have the article dutiable under the one or the other. But paragraph 74 is confined to "medicinal preparations of which alcohol is a component part, or in the preparation of which alcohol is used." And if it is with great difficulty that what is merely a "chemical salt," useful as a medicine, can be shown to be a "medicinal preparation" within the intent of Congress, a similar difficulty arises when it is attempted to show that alcohol is employed within the intent of Congress.

It has been pointed out in *Appeal of Battle & Co.* (50 Fed. Rep., 402) that what Congress had in mind was "that alcohol was used as an *ingredient*, without being broken up, either as a solvent or to extract and hold in solution the medicinal properties of certain vegetable substances or drugs." This case was affirmed on appeal, the court declaring it had reached the same conclusions as those expressed in the opinion of the lower court (12 U. S. App., 111). Of what concern it could be to Congress that in the preparation of the salt abroad

alcohol was used, there being no longer any alcohol present, either because it had evaporated and left a salt, or because, as in the Battle Case, it had been "broken up into its constituent elements, and does not reappear in the drug, and can not be extracted therefrom, as it may be when used as a solvent or to treat oils or other fatty substances."

It is true that the court of appeals in the present case says: "In its preparation alcohol is necessarily used as a solvent" (Ctf., p. 1). But this does not require us to understand that the solid crystal imported has any alcohol about it, but is entirely consistent with what is said in the case of *In re Mallinckrodt* (66 Fed. Rep., 746), which is a direct authority in our favor, that alcohol is used to remove impurities from the cocaine. (See also *In re Hirzel*, 53 Fed. Rep., 1006.)

Whether a salt is precipitated in or crystallized by water or alcohol, or the substances of which it is *made* purified by water or any other liquid, in a foreign country, would seem to be of no importance to Congress in laying a duty upon the salt itself. Yet by this slight thread is an article clearly described in paragraph 76 to be transferred to paragraph 74.

We submit that Congress knew that "chemical salts," whatever their use, did not contain alcohol, and that alcohol was not used in the preparation of any of them except possibly as the solvent in which their elements were crystallized or washed; and that, therefore, it did not intend to embrace them in paragraph 74.

Again, paragraph 76 is the later section, and if a conflict or equality exists, with no other means of escape,

must prevail; that is, chemical salts must pay duty as such in disregard of "medicinal preparations" rather than the contrary. Or, if no other means of determining exists, the doubtful must give way to the clear. It is easily disputed that muriate of cocaine is within the meaning of paragraph 74; but no one pretends to deny that it is a "chemical salt." A name such as "salts" is more definite than a description. (*Arthur* v. *Rheims*, 96 U. S., 143; *Robertson* v. *Glendenning*, 132 U. S., 158; *Matheson* v. *United States*, 71 Fed. Rep., 394.)

"Medicinal preparations" is at most a description. As was said about different merchandise in *Solomon* v. *Arthur* (102 U. S., 208, 212): "But are the terms relied on a name for goods; are they not descriptive rather than denominative? * * * The same description is applicable to many other kinds of goods, all having different names. It is not their name; it is merely their description." "Salts," on the other hand, is a designation. Even if a generic term, it is still a designation.

Whether or not the term "chemical compounds" is large and vague, even in the comparatively limited sense in which it is used in trade and science (for in its broadest sense it embraces everything excepting the chemical elements), the term "chemical salts," or "salts," stands for a very definite and specific class of substances, meaning always the product of an acid combined with a base, either alkali or alkaloid. The meaning of the term is thus definitely limited by the scientific classification, based upon the necessary chemical facts and relations, which also determine the ordinary meaning of the term and its commercial sense. Chemical salts is therefore

not a description but a designation. It expresses a law of chemical union which is of force always and everywhere, and under which the combination of an acid with an alkaline or alkaloidal base necessarily and unerringly falls under that term.

It makes no difference how large the list of salts may be, nor how small the list of medicinal preparations in question, though, as a matter of fact, there is no adequate testimony on this point (Ctf., p. 2); the one expresses a definite designation; the other is a vague and general description. This is true, although there may be, as shown in the certificate, a commercial meaning of the term medicinal preparation, identical, however, with the ordinary meaning; and although muriate of cocaine is a medicinal preparation in trade and commerce, and although the term salts or chemical salts is generic. At most, it can be said that muriate of cocaine is covered by both terms, and the question is, which term describes and designates it most accurately and definitely. Tested by the foregoing considerations, it is submitted that the class of chemical salts, however numerous, constitutes a more fully coordinated and specifically designated class than "medicinal preparations." Thus "acids" was held to be a specific designation in *Matheson* v. *United States* (71 Fed. Rep., 394). So, in the case of *Mason* v. *Robertson* (139 U. S., 624, 627), the court in discussing the corresponding provision of the customs act of 1883 uses the following language:

> The designation "all chemical compounds and salts, by whatever name known," includes all chemical compounds and chemical salts used then or

thereafter in any science or art, as clearly as if the proper names of each and all of them had been given.

While the phrase "by whatever name known" does not appear in the equivalent paragraph of the act of 1890, it may truly be said that this phrase renders the provision more emphatic, but it does not render it more precise—it does not include a chemical salt any the more clearly, nor designate it any the more accurately, than if it had been omitted.

Now, the clear intent of Congress, as shown by the language used, in framing paragraphs 74, 75, and 76 is to combine and adjust the separated provisions of previous enactments as to medicinal and proprietary preparations, and the group of chemical compounds in question—medicinal preparations and medicinal proprietary preparations employing alcohol are charged with a duty of 50 cents per pound. This specific duty was adequate and satisfactory where alcohol constituted a part of the preparation under paragraph 74; the *ad valorem* rate was applied to non-alcoholic preparations by paragraph 75, and to "calomel and other mercurial medicinal preparations" by that special designation; and by paragraph 76 an *ad valorem* rate is applied to the alkaloid, distilled oil, and chemical salt class. This is in accordance with the policy as to classification and rates imposed by previous acts. (See tariff act of 1883, paragraphs 92, 93, 118.) This consideration is not obnoxious to the rule that the economical policy of Congress may not be regarded at the expense of violence to the language; it merely brings into relief the proper construction of the

language in order to effectuate the clear intent. Alkaloids and salts, similar to cocaine and its salts, which might be held to be medicinal preparations, are specially provided for, as santonine and its salts by paragraph 78 of the act of 1890; strychnine and its salts by paragraph 87, and quinine and its salts by paragraph 690 of the free list.

Again, we contend that in accordance with this principle and policy, the alcohol under paragraph 74, if not a component part, must be used, not as part of a process merely, or an agency in production, but as part of a result. It must appear in the final product to some extent, or in some form, to constitute a "medicinal preparation in the preparation of which alcohol is used" in the sense of paragraph 74. This language is equivalent to a preparation in which alcohol is used, in which it appears as an ingredient, and that excludes its use merely as a solvent or to effect or perfect crystallization. This is in accordance with the meaning and force of the previous cognate provisions, classifying and defining medicinal preparations. The language of paragraph 75 is persuasive to the same effect. Otherwise, in addition to the phrase "of which alcohol is not a component part" in that paragraph, the phrase "or in the preparation of which alcohol is not used" should appear. Suppose alcohol were not used in the manufacture of muriate of cocaine, would it be claimed to fall under paragraph 75 as a medicinal preparation, of which alcohol is not a component part?

Yet if muriate of cocaine is a medicinal preparation (irrespective of the use of alcohol) rather than a chemical salt for tariff purposes, that is where it ought to be.

Does the mere fact that alcohol is used as a mechanical adjunct or adjuvant of manufacture strengthen the case in any degree?

Furthermore, the association of alkalies or alkaloids and their salts in tariff provisions has been and is a continuous one, both in the provisions for the group before us as developed into the form of the paragraph in the act of 1890 and in special provisions of former and subsequent acts. (E. g. act of 1890, paragraph 35, "morphia *and all salts thereof;*" similarly paragraph 78 as to santonine, and paragraph 87 as to strychnine, and paragraph 690 of the free list as to quinine; see also paragraphs 123 and 521 of the act of 1883; Revised Statutes, section 2504, pages 478, 480, as to morphia and quinine; act of 1894, paragraphs 25, 601.)

The fact that calomel and other mercurial medicinal preparations are specially provided for elsewhere as salts is reason for holding that chemical salts which are used in medicine, or as the materials out of which medicines are prepared, or as medicinal preparations, fall naturally and properly in the intent of Congress under the language of paragraph 76.

It is no objection to this view to say that "chemical salts" also includes salts of alkalies as well as of alkaloids. There could be no other chemical salt than one formed from an alkali or an alkaloid as a base, and since an alkaloid is merely an organic form of alkali, or a substance of organic origin resembling an alkali, the two terms are so similar in their meaning and describe such related objects that "salt of an alkaloid," or "alkaloidal

salt," may well be pointed out by "chemical salt;" so that the designation is none the less definite and accurate for muriate of cocaine because an alkaline salt would also be included in the term. This is the force and effect of the decision in the case of the Mallinckrodt Chemical Works (66 Fed. Rep., 746, 747), viz:

> By the language employed in paragraph 76 Congress has manifested an intention to impose a duty * * * on all of a specific class of organic substances or compounds known as alkaloids or salts.

By "substances" the court plainly refers to alkaloids and by "compounds" to the allied salts, the latter being pointed out by the term "chemical salts." The same relation is intimated by the fact that in ordinary language, in commerce and in tariffs, muriate of ammonia is known as *sal*-ammoniac.

It is merely stating the fact, born of this necessary relation between alkaloids and salts, in another form, to say that paragraph 76 is to be construed as if it read "products or preparations, known as alkalies and alkaloids * * * and all chemical compounds and salts of alkalies and alkaloids," or as if it read "alkalies, alkaloids, and the salts thereof."

We submit, however, that the plain and obvious reading of the law is clearly the correct one; that Congress meant by medicinal preparations in which alcohol was used a class of articles that did not embrace chemical salts, and by chemical salts a class of articles that did not embrace medicinal preparations in which alcohol was used; and that it is straining matters to seek to thus confound what Congress put asunder. See what this

court said about "chemical salts" and how they were to be classified in *Mason* v. *Robertson* (139 U. S., 624, 627).

The act of 1890, section 1, declares that unless otherwise specially provided for in the act, there shall be levied and collected upon all articles mentioned in the schedules therein contained the rates of duty which are by the schedules and paragraphs, respectively, prescribed. That is to say, upon "chemical salts" 25 per cent ad valorem, and upon medicinal preparations in which alcohol is used, 50 cents a pound. The only exception is, otherwise *specially* provided, that is by name or in some other special manner, as distinguished from a general manner.

This seems to indicate that Congress did not understand that the same article was embraced under two paragraphs, or intend the language of one general paragraph to cover what was in another. The law should be interpreted accordingly, and when a paragraph plainly and unquestionably lays a duty upon all "chemical salts," not specially provided for, the presumption arises that language in another general paragraph is not intended to lay a duty upon "chemical salts." This presumption should be overcome only by the most unavoidable indication to the contrary, and not by a forced interpretation of doubtful language. The general intent of Congress to make an absolute separation by paragraphs which do not overlap is a part of the law, and doubtful language should be construed so as to further that intent. Congress affirms, in effect, that its general paragraphs do not conflict, and intends that they shall not. Only an

unavoidable construction should be permitted to make them do so.

The distinction we have pointed out between a "medicine" and a "preparation" is recognized in section 10 of the act concerning "all medicines, preparations, compositions, perfumery, cosmetics, cordials," etc. And in Revised Statutes, 2933 and 2935, heretofore cited, referring to the appraisement and examination of such things, we find "all drugs, medicines, medicinal preparations, whether chemical or otherwise." In Revised Statutes, 2934: "All medicinal preparations, whether chemical or otherwise, usually imported with the name of the manufacturer, shall have the true name of the manufacturer and the place where they are prepared permanently and legibly affixed," etc. Nothing is said in Revised Statutes, 2934, about "drugs" and "medicines," although the distinction just made between them and "medicinal preparations" left them uncovered by Revised Statutes, 2934.

It thus appears that "preparations" and "medicinal preparations," though broad words, were not, in the mind of Congress, equivalent to "drugs" or "medicines," or the articles intended always to be treated in the same way. Yet the appellants' definition of "medicinal preparations" would break down all distinction between "medicines" and "drugs" and "medicinal preparations," including proprietary "medicinal preparations." In the schedule of the Revised Statutes "medicinal preparations" appears to be used only concerning proprietary medicinal preparations, and therefore the same words in Revised Statutes, 2933 and 2935, refer to

such preparations only. Out of these proprietary medicines, popularly called "patent medicines" as a beginning, Congress has extended its attention to similar "medicinal preparations" which did not strictly answer the description of proprietary. But the original character of the class of preparations in other respects continued to be stamped upon the class; and in the process of changing phraseology, Congress enumerated the different kinds of preparations in 1883, a very useless proceeding if all medicines or drugs are included in the words "medicinal preparations."

Though the class thus established be difficult to describe with accuracy, it is not intended to include all medicines or drugs, and therefore the mere fact that the salt known as muriate of cocaine is a medicine or drug does not require it to be considered a "medicinal preparation;" yet an opponent will find it difficult to show any other fact which could be supposed to make it more of a "preparation" than the generality of drugs.

Some attention should be paid to the circumstance that if an exception is intended to be made by one clause of a law to another the exception ordinarily and naturally follows the rule. It is more natural to read section 76 as making an exception of salts from among the medicinal preparations than to read section 74 as making an exception from among salts. Another circumstance already adverted to is the evolution of the sections under consideration from prior legislation, in which, as we have seen, Congress treated "all drugs, medicines, and medicinal preparations," and also "medicinal prepa-

rations" alone as classes, whereof "chemical" drugs, medicinal drugs, medicines, and preparations, or chemical preparations were the species. We are not indeed concerned with scientific, but with Congressional classification, although "chemical salts" means the same thing in any classification, and has a precise signification in science, commerce, and law alike, and this court has said (*Lutz* v. *Magone*, 153 U. S., 105) that the scientific designation of an article is not necessarily to be ignored in fixing its proper classification for duties.

Yet another circumstance heretofore mentioned is the greater definiteness of a description by the nature of a thing than by the accidents of its use and method of manufacture. There is no more certain thing in mathematics than a salt in chemistry; but "medicinal preparations" in which alcohol is used constitute a vague and varying class whereof use, method of manufacture, and distinction from drinks and foods constitute parts of the description. And another circumstance is that Congress, in paragraph 76, itself distinguishes between products, preparations, combinations of these, and chemical compounds and salts, instead of using "preparations" as a word comprehending them all. If Congress used "salts" as a class distinct from "preparations" in paragraph 76, it intended "salts" to be distinguished from "preparations" in a wholly different paragraph. It is proper to point out that this distinction is confirmed by the proviso in the corresponding paragraph in the act of 1894 (paragraph 58, 28 Stat., 511), by which a discrimination was effected, so that no products which might be embraced in the language of paragraph 74 should pay less than 25 per cent.

III.

Even if it should be held that the language of paragraph 74 also embraces muriate of cocaine, the higher rate of paragraph 76 must be exacted under the rule that when two or more rates of duty are applicable the highest shall be imposed.

At the most it may be contended that the descriptions or designations of the merchandise by paragraphs 74 and 76 are equally applicable. This invokes the rule that if two or more rates of duty are applicable to any imported article it shall be classified for duty under the highest of such rates. (*Liebenroth* v. *Robertson*, 144 U. S., 35; *Dieckerhoff* v. *Robertson*, 40 Fed. Rep., 568; *In re Wertheimer*, 55 Fed. Rep., 281.)

The Treasury decisions referred to in the brief for the appellants, pages 9, 22 (to be regarded here only as aids in considering the question), determined for the most part the status of various tinctures, extracts, and proprietary articles. Where chemical salts were passed upon and determined to be medicinal preparations, the ground has been either of their nature, being equivalent to a salt like sulphate of quinia, long and specially recognized in trade and popularly known as a medicine or medicinal preparation, or because of the proprietary nature of the article, or because there is no question as to alcohol forming a component part or being used in the preparation. Some of these rulings involve the very questions which have been referred to this court in this case, as to which, it may be said further, that the course

of construction has not been so long continued, settled, and uniform as necessarily to influence the court on that ground.

Referring briefly to the cases bearing upon the subject, they are not without influence in considering the facts and questions here; in particular, the propositions determined in the Mallinckrodt Case are not erroneous, as contended by the appellants. In the *Appeal of Battle & Co.* (50 Fed. Rep., 402, affirmed in 12 U. S. App., 111), it was determined that chloral hydrate was dutiable under paragraph 76, of the act of 1890, upon the ground that Congress in paragraph 74 had only in mind medicinal preparations in which alcohol is used as an ingredient.

The case *In re Hirzel et al.* (53 Fed. Rep., 1006), passing upon the dutiability of the alkaloid, crude cocaine, supports the view that alkaloids are generally medicinal, and that all medicinal preparations are not alkaloids; that "alkaloid" is a more specific designation than medicinal preparations. This case turned largely upon the evidence presented, but certainly tends to show that a "chemical salt" of alkaloid origin is more specific than "medicinal preparations."

In the *Mallinckrodt Case* (66 Fed. Rep., 746) the importation was identical with that in the present case. It decides these propositions: That the description of both paragraphs is generic and not sufficiently specific to identify the article in question from other drugs and chemical compounds; that there are many alkaloids—a term applied to organic compounds having the properties of alkalies; that they constitute a specific group and

suggest a more precise meaning than "medicinal preparations in the making of which alcohol is used;" that the language employed shows an intention to impose a duty on all of a specific class of organic substances or compounds known as alkaline or alkaloid salts, except where a duty is imposed on certain members of that class by their trade name. And the decision points out that as crude cocaine is clearly dutiable under paragraph 76, and muriate of cocaine is a finished product, it is hardly probable that the finished product was intended to be dutiable at a less rate than the crude.

To the last consideration it may be added that to admit such a chemical salt as this at a rate of duty of 50 cents per pound would be, one might well say, an untenable proposition, being equivalent, as matter of fact, to 1 per cent, or less, *ad valorem;* while the "catch-all" clause of the tariff of 1890 (section 4) imposed a duty of 10 per cent *ad valorem* on all nonenumerated, raw, or unmanufactured articles; and on all articles manufactured in whole or in part not provided for in the tariff act, a duty of 20 per cent *ad valorem.* The whole scheme of the tariff act may well be regarded in determining the construction of its various provisions; and no possible intention of Congress can be conceived to admit such high-grade preparations as these very expensive medicinal salts at a rate of duty which would be almost equivalent to putting them upon the free list, which Congress has carefully avoided doing.

Consequently we conclude that the term "medicinal preparations in the preparation of which alcohol is used"

is descriptive, and that the term "chemical salts" in itself, and as plainly designating "alkaloidal salt" or "salt of an alkaloid," is denominative and creates a more specific classification, and even if it should be held that both are generic and not sufficiently specific to identify the article among other drugs, compounds or preparations, nevertheless the language of paragraph 76 is more accurate and more truly describes and classifies the product muriate of cocaine than paragraph 74.

It is therefore respectfully submitted that the first question propounded should be answered in the negative, and, by consequence, that the second question should be answered in the affirmative.

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